

**BEFORE THE INDIANA CIVIL RIGHTS COMMISSION
311 West Washington Street
Indianapolis, Indiana 46204**

STATE OF INDIANA)
) SS
COUNTY OF MARION)

PEGGY PRICE
Complainant,

DOCKET NO. PAha78080630A

vs.

**ILLINOIS MUTUAL LIFE AND
CASUALTY COMPANY,**
Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On January 18, 1980, James A. Lang, Chairman entered his recommendation in the above cause. Neither party has filed objections to that recommendation within the ten (10) day period prescribed by IC 4-22-1-12 and 910 IAC 1-12-1.

Being duly advised in the premises, the Commission hereby adopts as its final Findings of Fact, Conclusions of Law, and Order those recommended in the Chairman's Recommended Order, which is attached hereto and incorporated by reference herein.

Dated: February 22, 1980

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RECOMMENDED ORDER

Comes now Respondent, Illinois Mutual Life and Casualty Company, by counsel, and files it's Motion to Dismiss, which is in words and figures as follows:

(H. I.)

And comes now Complainant, Peggy Price, by counsel, and files here Reply in Opposition to Respondent's Motion to Dismiss that is in words and figures as follows:

(H. I.)

And comes now James A. Lang, Chairman of the Indiana Civil Rights Commission, having considered the above and being duly advised in the premises, and hereby enters the following Recommended Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Complainant filed a timely Complaint with the Indiana Civil Rights Commission on August 4, 1978.
2. Complainant has been certified as a handicapped person by the Indiana Rehabilitation Services.
3. Complainant has alleged that Respondent discriminated against her by denying her equal access to its services which it offers to the general public.
4. Respondent is a "public accommodation" since it is an establishment which offers its services to the general public.
5. The alleged act of discrimination was stated in the Complaint as follows:

- I. I was denied a policy for medical insurance on 7/13/78.
- II. The R/P stated the reason was information on medical form.
- III. I am an epileptic. I believe I have been discrimination against because of my handicap. Because: the history of my epilepsy was the only medical information on the application.

CONCLUSIONS OF LAW

1. The Complaint in this cause fails to state a claim upon which relief can be granted under the Indiana Civil Rights Law, IC 22-9-1-1 *et. seq.*
2. Any Finding of Fact which should have been deemed a Conclusions of Law is hereby incorporated as such.

ORDER

The Complaint in this cause shall be dismissed.

Dated: January 18 1980

MEMORANDUM

The Indiana Civil Rights Law, IC 32-9-1-1 *et. seq.* is a broad based statute of general applicability which was passed to promote equal opportunity and to provide relief to persons discrimination against because of race, religion, color, sex, handicap, national origin or ancestry when such discrimination related to the acquisition or sale of real estate, education, public accommodations, employment, or the extending of credit.

Complainant contends that she is entitled to relief under the Indiana Civil Rights Law because she was denied a medical insurance policy because of her handicap. For the reasons stated below the undersigned believes that such a contention must be beyond the intent of the Legislature.

First of all, it may be noted that the Legislature perceived that handicapped persons might face real barriers to certain opportunities while the other protected classes face primarily artificial and arbitrary barriers to opportunities. This perception resulted in certain provisions that demonstrate that the Legislature did not intend to place liability upon respondents when the nature of the physical or mental condition which constitutes the handicap is so closely related to the opportunity sought as to create a real barrier. The following provisions illustrate this principle.

The prohibition against discrimination in employment, because of handicap does not apply to failure of an employer to employ or to retain as an employee any person who because of a handicap is physically or otherwise unable to efficiently and safely perform, at the standards set by the employer, the duties required in that job.
IC 22-9-1-13(a).

This section shall not be construed to require any employer to modify any physical accommodations or administrative procedures to accommodate a handicapped person.
IC 22-9-1-13(c).

Nothing in this chapter [16-7-5.5=1---16-7-5.5-5] shall require any person renting, leasing or providing for compensation real property to modify his property in any way to provide a higher degree of care for a handicapped person than one who is not handicapped.
IC 16-7-5.5-3.

Although the above quoted provisions do not apply specifically to this case, they do indicate that the Legislature would not have intended that an insurance company modify its underwriting standards or procedures to accommodate a handicapped person when such underwriting standards are based on real barriers (in the form of additional hazards or risks) rather than artificial or arbitrary barriers as compared to non-handicapped persons, when such underwriting standards are based on real barriers (in the form of additional hazards or risks) rather than artificial or arbitrary barriers as compared to non-handicapped persons.

It would seem to be uncontrovertable that epileptics face medical hazards and risks, which are not faced by non-epileptics. However, if Complainant, by filing this complaint is seeking to establish that she is in the same class and faces no greater hazards than non-epileptics, then the Indiana Civil Rights Commission is not the proper forum to hear such a contention.

The Legislature has enacted comprehensive legislation, which is not general in nature but specifically related to insurance. (See Indiana Code, Title 27). This legislation creates a Department of Insurance and provides:

Said department shall have charge of the organization, supervision, regulation...of all insurance companies...
IC 27-1-1-1

Unfair methods of competition in the insurance industry are proscribed and defined to include the following:

Making or permitting any unfair discrimination between individuals of the same class involving essentially the same hazards in the amount of premium, policy fees, assessments or rates charged or made for any contract of accident or

health insurance or in the benefits payable thereunder or in any other manner whatever, provided that, in determining the class, consideration may be given to the nature of the risk, plan of insurance, the actual or expected expense of conducting the business or any other relevant factor.
IC 27-4-1-4(7) (b).

If the Complainant contends that she is of the same class and faces essentially the same hazards as non-epileptics, then the Insurance Department would be the proper forum to hear and decide such a contention pursuant to the above quoted sections.

If the Complainant were to secure such a determination from the Insurance Commission and the policy was denied upon reapplication, such additional facts alleged in a new complaint would probably state a claim upon which relief could be granted pursuant to the Indiana Civil Rights Law.

This opinion does not in any way exclude insurance companies, as public accommodations, from the requirements of the Indiana Civil Rights Law. It holds only that where an insurance company denies medical coverage because of a physical or mental condition which would seem uncontrovertibly to involve risks or hazards not faced by a person without such condition, then a claim upon which relief can be granted under the Indiana Civil Rights Law is not stated until the threshold question of whether such physical or mental condition involves additional risks or hazards has been decided in Complainants favor by the Insurance Department to whom such questions have been specifically delegated by the Legislature.

Signed: January 18, 1980